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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

HARENDA BHATIA et al., Plaintiffs and Appellants, v. LOS ANGELES COUNTY OFFICE OF EDUCATION, Defendant and Respondent.	B192072 (Los Angeles County Super. Ct. No. BS101352)

APPEAL from a judgment of the Superior Court of Los Angeles County. Dzintra Janavs, Judge. Affirmed.

Lascher & Lascher and Aris E. Karakalos for Plaintiffs and Appellants.

Jackson, DeMarco, Tidus & Peckenpaugh and Louis C. Klein for Defendant and Respondent.

Harendra Bhatia and John Kruzic, both former employees of the Los Angeles County Office of Education, appeal the trial court's order denying their petition for relief from the provisions of Government Code[1] section 945.4, which prohibits the filing of tort claims against public entities unless the claims have been presented to and acted upon or deemed to have been rejected by the public entity. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Bhatia, Kruzic, and four other auditors for the Los Angeles County Office of Education were notified that their positions would be terminated as of January 31, 2005. They believed that the reasons given for the termination of their positions were pretextual and that the positions actually were eliminated in retaliation for their work on Head Start program audits.

Attorney Joshua Merliss began representing the petitioners on May 18, 2005. At the time, Merliss already had an unrelated but somewhat similar case involving a suit against a community college district on which he was working with another lawyer, employment law attorney Michael Duberchin. In the context of that other case, Duberchin had advised Merliss that section 911.2, concerning the presentation of government claims, did not apply to their community college suit.

Based on this conversation, Merliss believed that the claim presentation requirement of section 911.2 did not apply to the present case either, and that the relevant time period in which he was required to give notice of the petitioners' claims was 12 months. Merliss did not do any legal research to confirm that Duberchin's advice about the other pending case was applicable to the petitioners' case.

Merliss submitted governmental claims for Bhatia, Kruzic, and three of the other four petitioners on August 12, 2005. The Office of Education rejected these claims as

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[1] Unless otherwise indicated, all further statutory references are to the Government Code.

untimely pursuant to section 911.2 on August 15, 2005. Merliss subsequently performed legal research on the applicable statutory claim deadline.

Merliss then prepared an application for leave to present late claims for each petitioner, but the Los Angeles County Office of Education rejected the applications. Petitioners filed a petition for relief from the claims presentation requirement. The trial court denied the petition, and Bhatia and Kruzic appeal.[2]

DISCUSSION

Petitioners filed their petition for relief from the government claims presentation requirements under the authority of section 946.6, subdivision (c)(1), which offers relief from those requirements when "[t]he failure to present the claim was through mistake, inadvertence, surprise, or excusable neglect unless the public entity establishes that it would be prejudiced in the defense of the claim if the court relieves the petitioner from" the prohibition on filing suit without complying with the presentation requirements. " . . . 'Relief on grounds of mistake, inadvertence, surprise or excusable neglect is available only on a showing that the claimant's failure to timely present a claim was reasonable when tested by the objective "reasonably prudent person" standard. The definition of excusable neglect is defined as "neglect that might have been the act or omission of a reasonably prudent person under the same or similar circumstances."' [Citations.]" (*Renteria v. Juvenile Justice, Department of Corrections & Rehabilitation* (2006) 135 Cal.App.4th 903, 910 (*Renteria*); see also *Shaddox v. Melcher* (1969) 270 Cal.App.2d 598, 601 [moving party must show misconception was reasonable, or that it might have been the conduct of a reasonably prudent person under similar circumstances].) A court's denial of a petition for relief under this section is reviewed for an abuse of discretion, although the denial of relief is scrutinized more closely than an

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[2] The four other employees have been dismissed from this appeal at their request.

order granting relief. (*Bettencourt v. Los Rios Community College Dist.* (1986) 42 Cal.3d 270, 275-276 (*Bettencourt*).)

Petitioners argue that the trial court abused its discretion when it denied their petition for relief because Merliss made a simple, honest, and reasonable mistake of law that constituted excusable neglect, and also as a matter of policy: the claims were submitted only 11 days late, the policy underlying section 946.6 is to provide relief from technical rules that may trip up claimants, and granting relief here from a reasonable mistake would be consistent with policy favoring trials on the merits and would not undermine the policies requiring timely claims against public entities. We conclude that the trial court did not abuse its discretion.

Whether a mistake of law constitutes excusable neglect for the failure to present a timely government tort claim is a factual question determined by the reasonableness of the misconception and the justifiability of the lack of determination of the correct law. (*Hernandez v. Garcetti* (1998) 68 Cal.App.4th 675, 683 (*Hernandez*).) Although an honest mistake of law may be a valid ground of relief from the failure to submit a timely claim, ignorance of the law combined with negligence in ascertaining it warrants the denial of relief. (*Id*. at pp. 683-684; *Tammen v. San Diego County* (1967) 66 Cal.2d 468, 476 ["'Ignorance of the law, at least where coupled with negligence in failing to look it up, will not justify a trial court in granting relief . . . and such facts will certainly sustain a finding denying relief. . . .'"].)

Here, the record does not establish excusable neglect. A reasonable attorney would have performed research on any statutes that appeared ambiguous or conflicting and would have determined the actual deadline for presenting the petitioners' claims to a public entity—or consulted with a qualified attorney about the facts of the particular case in order to identify the appropriate deadline. Merliss did not do these things. By Merliss's own statements, although he was aware of section 911.2, he performed no legal research on the applicability of the six-month presentation deadline in that statute until after he submitted late claims that were rejected. When the court asked, "[D]id you hit the books? Did you look at any research, anything at all before that time . . . ?" Merliss

answered, "I did not." Instead, Merliss relied upon the assertions of another attorney concerning an unrelated case, assuming without research or further consultation that the same claims presentation deadline would apply to this case. The trial court did not abuse its discretion in concluding that counsel did not demonstrate diligence in investigating and pursuing the claims and that his reliance on another attorney's opinion as to the applicable claims presentation requirement in another, unrelated case was unreasonable and did not justify the failure to discover the applicable statutory deadline. (See *Renteria, supra,* 135 Cal.App.4th at p. 910; *Hernandez, supra,* 68 Cal.App.4th at p. 683.)

The instant case differs significantly from each of the cases on which petitioners rely to support their argument that Merliss's neglect was excusable. Petitioners quote two sentences from *Bettencourt, supra*, 42 Cal.3d at page 277, in which the court noted that appellate courts had reversed trial court orders denying relief when the attorney's neglect was comparable or more serious than that evidenced in the facts of *Bettancourt*. Petitioners then argue that this "logic" mandates relief here, but in that quoted passage the Supreme Court did not establish an alternate test for relief based on the seriousness of counsel's error. The question remains one of excusable neglect (§ 946.6, subd. (c)(1)), and in *Bettencourt* the error (counsel's assumption that city college employees were state employees) was excusable. Counsel did not live near or practice near the college in question, higher education can involve a "confusing blend" of governmental agencies, and documents received from the proper entity were not likely to alert counsel to his error. (*Bettencourt*, at pp. 276-278.) In contrast, here we have an unreasonable, inexcusable error by an attorney who knew of section 911.2 but failed to perform research to ascertain its applicability.

In *Kaslavage v. West Kern County Water Dist.* (1978) 84 Cal.App.3d 529, it was reasonable, although incorrect, for the attorney and investigator to assume that a water district owned a pipe in a canal owned by the water district. The court observed that the investigation was not marked by a "cavalier approach to fact finding . . . . He made a substantial investigation. His investigation was not sufficient, but neither was it inexcusable." (*Id*. at p. 536.) In contrast, in the present case there was a failure to

investigate—Merliss did not do any pre-presentation legal research on the proper deadline, assuming that what counsel in another matter told him about that case would be true for this one.

Nor is this case akin to *Flores v. Board of Supervisors* (1970) 13 Cal.App.3d 480 or *Lawrence v. State of California* (1985) 171 Cal.App.3d 242. In *Flores*, the government tort claim was not timely presented due to counsels' failure to open a file that would have reminded them of the applicable deadline. (*Flores*, at p. 483.) In contrast, here the problem was not one of calendaring: the claims were not timely presented because counsel entirely failed to familiarize himself with the appropriate statutory requirement until after it had passed. In *Lawrence*, it was reasonable for counsel to rely on the erroneous representation by a branch of county government that the location where the plaintiff was injured was under county control, even though this representation turned out to be incorrect. (*Lawrence*, at pp. 244-246.) No governmental advice or assertions were responsible for the delay in presenting proper claims here.

As petitioners have not established mistake, inadvertence, surprise, or excusable neglect here, we do not proceed to the question of whether the respondent has demonstrated that it would be prejudiced by permitting late claims. (§ 946.6, subd. (c)(1).)

DISPOSITION

The judgment is affirmed. Respondent shall recover its costs, if any, on appeal.

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ZELON, J.

We concur:

PERLUSS, P. J.

WOODS, J.